No. 21959

United States Court of Appeals
For the Ninth Circuit

RUTH IOLA HOFFMAN, *Appellant,*

vs.

UNITED STATES OF AMERICA, and
PEARL L. LECHNER, *Appellees.*

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

HONORABLE WILLIAM T. BEEKS, *Judge*

OPENING BRIEF OF APPELLANT

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On Appeal from the Judgment of the United States District Court for the Western District of Washington, Northern Division

Honorable William T. Beeks, *Judge*

OPENING BRIEF OF APPELLANT

I. JURISDICTIONAL STATEMENT

Jurisdiction is conferred pursuant to the National Life insurance Act (63 Stat., 74, 38 U.S.C.A., Sec. 701-784) and diversity of citizenship under 38 U.S.C. No. 784.

II. STATEMENT OF THE CASE

That the appellant, Ruth Iola Hoffman, was married to Franklin A. Hoffman on August 16, 1925 and lived with him thereafter until a divorce was granted on the 7th day of March, 1963, in the Superior Court of the State of Washington for King County, being Cause No. 578937; that at all times they were residents of Seattle, King County, Washington.

That Franklin A. Hoffman, while enlisted in the United States Army in the years 1950 and 1951, obtained two National Service Insurance Policies for $5,000.00 each, in which the appellant, his wife, was the designated beneficiary.

That in January, 1962, the said Major Franklin A. Hoffman, a resident of Seattle, King County, Washington, filed a suit for divorce against his wife in the said Superior Court for King County, and for a division of the community property belonging to him and his wife.

That in said divorce decree the plaintiff, Franklin A. Hoffman, was ordered and directed by the court to at all times keep in full force and effect the two life insurance policies on his life and to keep and maintain Ruth Iola Hoffman the sole beneficiary in each of said policies during her life time.

That the said Franklin A. Hoffman, in contemptuous violation of said decree of divorce, designated the appellee, Pearl L. Lechner, as beneficiary in said policies.

That the said Franklin A. Hoffman died about April 10, 1964, and thereafter the Veterans Administration denied the claim of Ruth Iola Hoffman to said insurance money but has not as yet paid insurance money to anyone. That the said Ruth Iola Hoffman filed suit in the United States District Court for the Western District of Washington, Northern Division, Cause No. 6408, against the United States of America and Pearl L. Lechner, defendants, stating that she was owner of and entitled to the insurance money by order of the court which had adjudicated her the irrevocable beneficiary in the said policies, and

that Franklin A. Hoffman's right to designate a change of beneficiary in said policies had been judicially taken away from him.

That the United States filed an answer and counterclaim in the nature of an Interpleader, and stands ready to pay the proceeds of said policies in accordance with the decree of the court. That the appellee in the District Court denied the claim of Ruth Iola Hoffman's allegation that she was entitled to the proceeds and claimed the proceeds to be her property.

That a stipulation was entered into between the parties on or about February 28, 1967 in regard to the issues and facts and the matter was submitted to the court upon said stipulation and the motions for a summary judgment which came on for hearing at pretrial and resulted in the court's opinion that the defendant, Pearl L. Lechner, was entitled to the proceeds of both policies.

IV. SPECIFICATION OF ERRORS

THE COURT ERRED:

1) In holding that Pearl L. Lechner was the beneficiary entitled to the proceeds of both policies in the sum of $10,134.42.

2) In granting the recovery of an attorney fee in the amount of 10% of the total sum to be paid under the two policies to the attorneys for Pearl L. Lechner for their services.

3) In holding that Ruth Iola Hoffman was not entitled to recover said money in the sum of $10,134.42.

4) In holding that the judgment in favor of Ruth

Iola Hoffman in the Washington Superior Court was not *res judicata* and binding upon Franklin A. Hoffman and his privies, the United States of America and Pearl L. Lechner.

V. STATEMENT OF APPELLANT'S POINTS ON APPEAL

1) That the Superior Court judgment in favor of the appellant, set forth in her complaint, is *res judicata* of all issues existing in the present case in the U.S. District Court.

2) That the defendants, United States of America and Pearl L. Lechner, are in privity with Franklin A. Hoffman, and each of them is bound by the Superior Court judgment, and concluded by the said judgment.

3) That the right to the insurance money was a vested property right and community asset of the appellant and her husband, Franklin A. Hoffman, and disposable as such in the divorce case, Cause No. 578937 in the Superior Court of the State of Washington for King County.

4) That this suit resolves itself into a controversy between the claimants to a fund involving property rights which should be disposed of under the State law rather than the Federal law.

5) That the judgment herein, appealed to the Circuit Court, unlawfully takes away the appellant's constitutional rights granted to the appellant by the Fifth Amendment to the Constitution of the United States of America.

ARGUMENT

The question involved in this appeal is the same as before the District Court: which claimant, the plaintiff, Ruth Iola Hoffman, or the defendant, Pearl L. Lechner, was entitled to recover a judgment against the United States of America for the proceeds of two policies of insurance?

A Stipulation of Facts was filed on May 28, 1967 (Tr. 19), leaving only questions of law for the District Court to decide.

The appellant believes the judgment of the court granting a recovery of $10,134.42 in favor of the appellee, Pearl L. Lechner, and the recovery of attorneys fees in favor of the appellee attorneys, is erroneous. The judgment of the District Court should have been in favor of the appellant, Ruth Iola Hoffman.

The judgment of the Superior Court of the State of Washington for King County, Cause No. 578937, decided on March 7, 1963, is *res judicata* of all facts, issues and contentions set forth in the first cause of action in said Cause No. 6408 in the United States District Court for the Western District of Washington, Northern Division.

The said Superior Court case was instituted by Franklin A. Hoffman, plaintiff, vs. Ruth Iola Hoffman, defendant, in which suit the plaintiff prayed for a divorce from his wife, and for a division of the property rights belonging to the parties (Plaintiff's Exhibit No. 1-Tr).

The said divorce suit was a contested case and resulted in a judgment by the court and the adjudica-

tion of all property rights; that in the court's Findings of Fact it is stated:

> "That the plaintiff and defendant own as community property the following:
>
> United States Government Life Insurance in the amount of $10,000.00.
>
> National Service Life Insurance in the amount of $5,000.00,

and further that

> "The defendant should be entitled to be the beneficiary to both the said National Service Life Insurance and the said United States Government Life Insurance, the plaintiff to be required to pay all premiums, due or to become due, upon said policies, by having said premiums remitted directly in payment of said premiums by allotment out of said retirement income or directly to Ruth Iola Hoffman, so that the policies shall at all times be kept in good standing."

In the said divorce decree the court awarded to the defendant Ruth Iola Hoffman, the life insurance, to-wit:

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant be awarded as her sole and separate property the following
>
> Policy No. 10981, dated August 1, 1947, in the principal sum of $5,000.00, in the United Services Life Insurance Company.
>
> Policies Nos. V 16344154, in the sum of $5,000.00, effective on or about April 17, 1951, and No. V 14236542, in the sum of $5,000.00, effective about April 1, 1950; each of said policies being in the National Service Life Insurance Company,
>
> including any renewals, extensions or conversions thereof, if any; and the said plaintiff is further

ordered and directed to at all times designate, keep and maintain Ruth Iola Hoffman as the sole beneficiary in each of said policies during her lifetime; and plaintiff is further ordered to pay the premiums on the said policies as they become due, by having said premiums paid directly by remittance out of his said retirement income, or remitted directly out of said income to Ruth Iola Hoffman; provided, however, in the event that the premiums cannot be paid directly out of said income plaintiff shall pay the money direct to Ruth Iola Hoffman so that she can pay the premiums."

"It is further stipulated that the plaintiff in the divorce action, Franklin A. Hoffman, was ordered by the court and directed to at all times keep in full force and effect Policies No. V 16344154 for the sum of $5,000.00, and V 14236542 for the sum of $5,000.00. He was further ordered and directed to designate and keep the defendant in the divorce action, Ruth Iola Hoffman, as the sole beneficiary of each of the policies during her lifetime." (Tr. 19)

We claim that the Superior Court had jurisdiction of the plaintiff, Franklin A. Hoffman and the defendant, Ruth Iola Hoffman, and all of their property rights, community and separate, and that the judgment in the divorce action determined said property rights, which judgment was final and binding upon the parties to said suit, including their privies.

In support of said statement, we cite the code and the following cases:

R.C.W. 26.08.110
Lynch v. Lynch, 67 Wn (2d 84 (1965)
Morris v. Morris, 69 Wash. Dec. (2d) 508 (1966)
Loomis v. Loomis, 47 Wn. (2d) 468 (1955)
Smith v. Smith, 63 Wash. 288 (1911)

Sears v. Rusden, 39 Wn. (2d) 412 (1951)
McLaughlin v. McLaughlin, 43 Wn. (2d) 111 (1953)
United Mtg. Co. v. Price, 46 Wn.(2d) 587 (1955)

"RCW 26.08.110. Decree of divorce or annulment — Finality — Restraining orders. In all cases where the court shall grant a divorce or annulment, it shall be for cause distinctly stated in the complaint, proved, and found by the court. Upon the conclusion of a divorce or annulment trial, the court must make and enter findings of facts and conclusions of law. If the court determines that either party, or both, is entitled to a divorce or annulment, judgment shall be entered accordingly, granting the party in whose favor the court decides a decree of full and complete divorce or annulment, and making such disposition of the property of the parties, either community or separate, as shall appear just and equitable, having regard to the respective merits of the parties, to the condition in which they will be left by such divorce or annulment, to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for costs, and for the custody, support and education of the minor children of such marriage. Such decree as to alimony and the care, custody, support and education of the minor children of such marriage. Such decree as to alimony and the care, custody, support and education of the children may be modified, altered and revised by the court from time to time as circumstances may require. Such decree, however, as to the dissolution of the marital relation and to the *custody, management and division of the property* shall be final and conclusive as in civil cases, and provided that the trial court shall at all times, including the pendency of any appeal, have the power to grant any and all restraining orders that may be necessary to protect the parties and secure justice." (Italics

ours)

The case of *United etc. Co. v. Price, supra,* was a contest between the assured's estate and the named beneficiary (the divorced wife), each claiming the proceeds. Prior to this action a divorce decree granted all insurance policies to the husband in the disposition of the property rights.

> "The administrator of the insured's estate is entitled to the proceeds of the insurance policy under such a decree."
>
> "Such a decree is more than an agreement of the parties — it becomes the superior court's disposition of the property of the parties properly before it. Unless that be so, the superior court failed to carry out the mandate of our statute to make '. . . such disposition of the property of the parties . . . as shall appear just and equitable' RCW 28.08.110."
>
> "The interest of the beneficiary in the proceeds of an insurance policy belonging to the community (however the beneficiary's right may be defined) *is an asset* in which the community has a very real interest. This is indicated by a long line of cases, beginning with *Occidental Life Ins. Co. v. Powers* (1937) 192 Wash. 475, 74 P.(2d) 27, 114 A.L.R.531, restricting the right of the husband, as manager of the community, to make anyone except his wife or his estate the beneficiary of such a policy."

In *McLaughlin v. McLaughlin, supra,* a divorce decree was entered. After the judgment became final the husband filed a motion to reconsider. The superior court entered a supplemental decree affecting the home. On appeal, the Supreme Court cites the divorce code RCW 26.08.110, and in reversing the lower court states:

> "The decree cannot be modified, since, by the express terms of the statute, the award as to the custody, management, and division of property is final and conclusive, subject only to the right of appeal. The trial court has no power or jurisdiction to modify it in that respect."

The appellees, Pearl L. Lechner and the United States of America are each in privity with Franklin A. Hoffman and each is concluded by the divorce judgment. We cite the following law and cases in support of said statement:

Baukin v. Livers, 181 Wash. 370, 43 P.(2d) 42
Ruffner v. Scott, 46 Wn. (2d) 240
Symington v. Hudson, 40 Wn. (2d) 331
Reed v. Allen, 286 U.S. 191
Ma Chuck Moon v. Dulles, 237 F.2d 241, 152 U.S. 1002
Riblet v. Ideal Cement Co. 54 Wn. (2d) 779

The law is clearly set forth in a quotation from *Sears v. Rusden,* 39 Wn. (2d) 412:

> "In Baskin v. Livers, 181 Wash. 370, 43 F.(2d) 42, this court adopted the following rule:
>
> > 'A judgment rendered by a court having jurisdiction of the parties and the subject matter, unless reversed or annulled in some proper proceeding, is not open to contradiction or impeachment, in respect to its validity, verity, or binding effect, by parties or privies, in any collateral action or proceeding, except for fraud *in its procurement*" (Italics ours)

and the quotation from *Reed v. Allen,* supra, decided by the Supreme Court of the United States:

> "These decisions constitute applications of the general and well settled rule that a judgment, not set aside on appeal or otherwise, is equally ef-

> fective as an estoppel upon the points decided, whether the decision be right or wrong. *Cornett v. Williams,* 20 Wall 226, 249, 250; 22 L.ed. 254 258, 259; *Wilson v. Dean,* 121 U.S. 525, 534; 30 L.ed. 980."
>
> "The indulgence of a contrary view would result in creating elements of uncertainty and confusion and, in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of *res judicata* to avert. Judgment reversed."

We quote further from First National Bank v. United States F & G Co., 35 S.E. 2d 47, 162 A.L.R. 1003 (Conn 1945). Two different actions were involved. In the second action *res judicata* was pleaded. It was a bar. The court states the rule of *res judicata*:

> "Decisions of our Supreme Court already set forth the essentials of *res judicata.* In the very recent case of *Bagwell v. Hinton,* 205 S.C. 377, 32 S.E. 2d. 147, 156, it was said: 'Before the defense of *res judicata* is made good the following elements must be shown: (1) The parties must be the same or their privies; (2) The subject matter must be the same; and (3) while generally the precise point must be ruled, yet where the parties are the same or are in privity the judgment is an absolute bar not only of what was decided but of what might have been decided.'
>
> "Privies are those who are so connected with the parties in estate, or in blood, or in law, as to be identified with them in interest, and consequently to be affected with them by litigation."

Under the laws of the State of Washington government life insurance policies, Veterans pensions and retirement pay are community assets and disposable as such in divorce actions. It has been so adjudicated in the following cases:

Loomis v. Loomis, 47 Wn.(2d) 468

Morris v. Morris, 69 Wash. Dec.2nd 508

At all times we claim that the two insurance policies involved herein are a property right belonging to Franklin A. Hoffman and Ruth Iola Hoffman, his wife, and that all right and title to said policies were involuntarily conveyed and set over to Ruth Iola Hoffman in the division of the property rights between the parties. Such is the Restatement of the Law, 1942:

> "Sec. 110. Judgment as a transfer of title. *In an action involving any property interest, where a court which has jurisdiction over the property interest renders a judgment which determines that one of the parties has a right or title superior to that of the other party, the judgment has the effect of an involuntary transfer from the unsuccessful party to the other."* (Italics ours)

In support of appellant's Point 5 (Tr. 58) that the judgment herein unlawfully takes away the appellant's constitutional rights granted by the Fifth Amendment to the Constitution of the United States, we cite the following authorities:

Lynch v. United States, 78 L.ed. 1434; 54 S.Ct. 840

Union Pacific R.R. Co. v. United States, 99 U.S. 700; 25 L.ed. 496

Hodges v. Snyder, 43 S.Ct. 435; 67 L.ed. 819

In the case of *Lynch v. United States, supra,* two veterans actions brought on war risk term insurance policies were dismissed in the District Court. Writs of Certiorari to the Supreme Court were taken, resulting in a reversal of the lower court. Congress repealed

the insurance rights in the following language quoted from said decision:

> "All laws granting or pertaining to yearly renewable term insurance.
>
> This repeal, if valid, abrogated outstanding contracts, and relieved the United States from all liability on the contracts, without making compensation to the beneficiaries."
>
> "Rights against the United States arising out of a contract with it are protected by the Fifth Amendment."
>
> "When the United States enters into contract relations its rights and duties therein are governed generally by the law applicable to contracts between private individuals."
>
> "Pensions, compensation allowances and privileges are gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress."
>
> "On the other hand, WarRisk policies, being contracts, are property and create vested property rights."

In the case of *Union Pacific R.R. Co. v. United States, supra,* the court states:

> "The United States cannot, any more than a state, interfere with private rights, except for legitimate governmental purposes. But, equally with the states, they are prohibited from depriving persons or corporations of property without due process of law."

Hodges v. Snyder, 43 S.Ct. 435; 67 L.ed 819, holds:

> "Private rights of parties, which have been vested by the judgment of a court, cannot be taken away by subsequent legislation, but must

thereafter be enforced."

How can Lechner and the United States of America claim that Hoffman had a right to change the beneficiary when the right was judicially taken away from him? He had left no legal or moral right to attempt to change the beneficiary. The United States of America is endeavoring to help enforce a wrong in favor of Lechner and against the appellant.

We submit that the judgment of the District Court should be reversed and the judgment be entered in favor of the appellant.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I certify that in connection with this Brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing Brief is in full compliance with the rules.

.....

RODMAN B. MILLER